

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 967 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATAN TALUKA MUMAN'S CATTLE BREEDING & MILK SUPPLY ASSN

Versus

STATE OF GUJARAT

Appearance:

MR AJ MEMON for Petitioner

Mr. S.J.Dave, A.G.P. for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 18/07/96

ORAL JUDGEMENT

This petition is filed by a registered society titled as The Patan Taluka Moomans' Cattle Breeding and Milk Supplying Association (hereinafter referred to as the said Association) to quash and set aside the circular issued by the respondent no. on 2.1.82.

2. The members of the petitioner Association have

got their own stables in Greater Bombay in Maharashtra State and they have also got their residential houses in Taluka Patan. They are dealing in she buffaloes and milk. The respondent no.1 has enacted Bombay Essential Commodities and Cattle (Control) Act, 1958 and by the said enactment, the regulation of movements, supply and distribution of cattle is controlled. Under the provisions of the said Act, if any cattle is to be taken out of Gujarat State an export permit is to be obtained on payment of certain fees. But under the provisions of the said Act of 1958, if the exported she buffalo is brought back after it becomes dry and is again taken back to Greater Bombay after its calving, then no fresh permit is to be obtained. It is the practice of the members of the Petitioner Association to bring she buffaloes which become dry from Greater Bombay to their villages and then to take them back after they are calving. They are taken back either after delivery or few days prior to the delivery to Greater Bombay.

3. In order to have control over the said movement of the she buffalo and in view of the provisions of the Said Act of 1958, the respondent Government has issued an order dated 2.1.82. As per the provisions of the said order a dry buffalo-salvage buffalo which is brought in Gujarat State after it had become dry and is not exported to Greater Bombay within 14 months from the date of its importing to State of Gujarat, then it would cease to continue as a salvage she buffalo. Consequently if the said she buffalo, was not taken back within 14 months after it was brought in Gujarat State, then it would cease to be a salvage-she buffalo and a fresh permit and necessary fee for exporting the said she-buffalo were to be obtained and paid by the member of the petitioner Association. It is the contention of the petitioner that fixation of this period of 14 months is neither reasonable nor legal and consequently said order deserves to be set aside and quashed and for that purpose they have come before this court by way of this petition.

4. The claim is resisted by the respondent by filing affidavit in reply. It is contended therein that the period of 14 months fixed by the respondents is quite reasonable and it could not be said to be illegal or arbitrary. It is contended therein that the salvage buffaloes which are brought are pregnant for 3/4 months in majority of cases and they would become milking she buffaloes 5-6 months after their entry in Gujarat State as salvage buffaloes. The non pregnant she buffalo would also become pregnant within 3-4 months after they are brought in Gujarat State and therefore, they could be

again become milking within 14 months. It is contended that said period is fixed in consultation with the Director of Animal Husbandry and the veterinary experts. Therefore, in the circumstances, said circular could not be said to be putting any restriction on the petitioner and the same could not be said to be invalid and illegal.

5. It is an admitted fact that when a she buffaloe is taken from the State of Gujarat to any other State an export permit is to be obtained by the person exporting the said she buffalo on payment of necessary fees. It is also an admitted fact that a she buffalo which was once exported can be brought back to Gujarat State after it had become dry as salvage she buffalo and as per the said circular if the same she buffalo is again exported within 14 months from its re-entry in Gujarat State, then no fresh export permit is to be obtained and no necessity to pay export fees. It is also not disputed that when a she buffalo is brought in Gujarat State after it had become salvage at the time of her entry in Gujarat State some identification mark is affixed on the said she buffaloe in order to ascertain that the same very salvage she buffalo was being taken back. Thus the respondent is taking necessary precaution to see that the members of the Petitioner Association do not take away new and fresh she buffaloe on false pretext of they being old salvaged she buffaloes. When such a precaution is taken by the respondent-Government, I am unable to understand what is the necessity for fixing this period of 14 months for re-export of the same salvage she buffalo.

6. It must be further mentioned here that the period of 14 months could not be said to be reasonable and valid period for such re-export of a salvage she buffaloe. In the affidavit in reply itself it has been stated that some of the she buffaloes which are brought back to Gujarat after they had become dry, as salvage, they are not pregnant i.e. not being with the calves at the time of their re entry in the State of Gujarat. It could not be said that she buffalo which is brought back in Gujarat State as salvage she buffalo must necessarily come on heat and must be calving within a period of 4-5 months from the date of its entry in Gujarat State. Therefore, it could not be said that a salvage she buffalo would become pregnant within the fixed period of its re-entry in Gujarat State. It depends upon the physical condition of an individual she buffalo. It is possible that some may take even a year for becoming pregnant and in that case said she buffalo could not be taken back to Greater Bombay within 14 months of its entry. Similarly, a she buffalo which is brought back to Gujarat within 3-4

months of its calving i.e. pregnancy, there is all possibility of the said she buffalo aborting within a month or two of its entry and in that case there would be further period of 4-5 months for its coming on heat and in that case also there could not be a possibility of sending the said she buffaloe back to Greater Bombay within a period of 14 months from the date of its entry. The order issued by the respondent State fixing the period of taking back salvage she buffaloe within 14 months could not be said to be reasonable or proper in view of the above discussion and contingencies. As a matter of fact, when the State Government is taking precaution in identifying she buffalo which is brought as salvage, there is no need to fix the period for taking back she buffalo out of Gujarat. Because when the identification mark is given on the said she buffalo at the time of re-export to Greater Bombay, it could very well be identified and seen as to whether the she buffalo which was being exported out of Gujarat is the same she buffalo which was brought as a salvage she buffalo or not. The petitioner Association has no objection regarding putting identification mark by way of threading, engraving on horns or other reliable method for the purpose of identifying the she buffalo which is brought as a salvage she buffalo in the State of Gujarat after its earlier export from Gujarat State. When such an identification could be done, fixing of the period for taking back that salvage she buffalo is unreasonable. I therefore, hold that the circular issued by the respondent - Government on 2.1.82 declaring that the she buffalo which was not taken back within 14 months would ceased to be salvage she buffalo is not rational and is arbitrary. I therefore, quash the said circular by allowing the present writ petition. It is hereby declared that the circular issued by the respondent Government on 2.1.82 is ultravires and illegal. The writ petition is allowed. Rule made absolute. In the circumstances of the case, parties to bear their respective costs.

(S.D.Pandit.J)